

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

-----X
ABATECH INDUSTRIES, INC.,

Plaintiff,

-against-

MINELLI CONSTRUCTION CO., INC.,

Defendant.
-----X

COMPLAINT

Index No. 18-6909

Plaintiff, Abatech Industries, Inc., by and through its attorneys, Rabinowitz, Galina
& Rosen, as and for its complaint herein, alleges as follows:

PRELIMINARY STATEMENT

1. Plaintiff, Abatech Industries, Inc. ("Abatech") brings this action against Defendant Minelli Construction Co. ("Minelli") to recover damages for breach of contract.

JURISDICTION AND VENUE

2. This Court has jurisdiction of this action pursuant to 28 USC 1332 (Diversity of Citizenship; Amount in Controversy).
3. Venue in this Court is proper pursuant to 28 USC 1391(b)(2) in that a "substantial part of the events or omissions giving rise to the claim occurred" herein.

PARTIES

4. At all times material herein, Plaintiff Abatech was and is a corporation duly organized and existing pursuant to the laws of the State of New Jersey with its principal place of business located at 1623 East 2nd Street, Scotch Plains, New Jersey 07076.
5. At all times material herein, Abatech was and is an asbestos abatement contractor.

6. Upon information and belief, at all times material herein, Defendant Minelli Construction Co., Inc. ("MINELLI") was and is a corporation duly organized and existing pursuant to the laws of the State of New York with its principal place of business located at 300 Corporate Plaza, Islandia, New York 11749.
7. Upon information and belief, at all times material herein Minelli was and is in the business of general construction.

FACTS

8. On or about 2011 Abatech entered into an agreement with MINELLI wherein and whereby Abatech agreed to perform asbestos abatement and removal for MINELLI on a project known as IS 171K, Brooklyn, New York. The "Owner" of the Project is the New York City School Construction Authority.
9. That from on or about 2011 and thereafter, Abatech commenced performing its work.
10. That from on or about 2011 and thereafter, Abatech performed its work at the Project.
11. That on or about 2016 and thereafter, Abatech completed its work and demanded that MINELLI provide all payments due and required under the Contract documents.

AS AND FOR A FIRST CAUSE OF ACTION

12. Plaintiff repeats and realleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.

13. On or about 2011 Abatech entered into an agreement with MINELLI wherein and whereby Abatech agreed to perform certain asbestos abatement and removed work for Minelli at the IS 171K Project, Brooklyn, New York (the "Project").
14. That on or about 2011 Abatech entered into an agreement with MINELLI wherein and whereby Abatech agreed to perform the asbestos abatement and removal work at the Project in exchange for the amount of \$ 313,000.00 with extras (the "Agreement").
15. That thereafter, Abatech and MINELLI entered into agreements wherein and whereby Abatech agreed to perform additional work and agreed to provide certain credits resulting in a final contract price of \$ 313,000.00 (the "Change Orders").
16. That Abatech performed its work and same was accepted by MINELLI and the project owner.
17. Abatech completed its work for the in the total value of \$ 313,000.12.
18. That MINELLI has paid Abatech the amount of \$ 210,345.20 pursuant to the Agreement and Change Orders.
19. That Abatech has duly performed all of its obligations pursuant to the Agreement and Change Orders.
20. That MINELLI has breached the Agreement with Abatech by failing and refusing despite due demand to pay Abatech for the work completed and approved.
21. By reason of the foregoing, MINELLI is liable to Plaintiff for breach of contract in the amount of \$ 300,659.11 with interest thereon from April 1, 2018.

AS AND FOR A SECOND CAUSE OF ACTION

22. Plaintiff repeats and realleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.
23. That the fair and reasonable value of the work performed by Abatech that remains unpaid by MINELLI is \$ 102,654.80.
24. That MINELLI has received the benefit of the asbestos abatement and removal work performed by Abatech and has benefitted by same.
25. By reason of the foregoing, MINELLI is liable to Plaintiff for quantum meruit in the amount of \$ 102,654.80 with interest thereon from April 1, 2018.

AS AND FOR A THIRD CAUSE OF ACTION

26. Plaintiff repeats and realleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.
27. That during the course of the Project Abatech sent invoices and statements of account to MINELLI.
28. MINELLI received and retained said invoices and statements of account without objection.
29. By reason of the foregoing, MINELLI is liable to Plaintiff for account stated in the amount of \$ 102,654.80 with interest thereon from April 1, 2018.

WHEREFORE, by reason of the foregoing, Plaintiff demands judgment against Defendant as follows:

- (A) On the First Cause of Action for breach of contract against MINELLI in the sum of \$ 102,654.80 with interest thereon from April 1, 2018;

(B) On the Second Cause of Action for quantum meruit against MINELLI in the sum of \$ 102,654.80 with interest thereon from April 1, 2018;

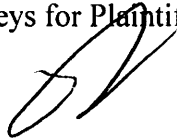
(C) On the Third Cause of Action for account stated against MINELLI in the sum of \$ 102,654.80 with interest thereon from April 1, 2018;

(D) Costs, disbursements and reasonable attorney's fees;

(E) Such other and further relief as to this Court seems just and proper.

Dated: December 4, 2018
Mineola, New York

Rabinowitz, Galina & Rosen
Attorneys for Plaintiff



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